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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34487

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION –
PETITION FOR DECLARATORY ORDER

Decided: July 27, 2005

In a decision served on March 22, 2004 (March 22 decision), and published in the Federal Register on March 25, 2004 (69 FR 15433), the Board instituted a declaratory order proceeding and requested comments by March 31, 2004, on the question of whether the preemption provisions of 49 U.S.C. 10501(b)(2) preclude a state court from hearing a lawsuit alleging that a railroad has failed to carry out its common carrier obligation to provide service. Comments were timely filed by the Association of American Railroads (AAR) and John D. Fitzgerald on behalf of the United Transportation Union – General Committee of Adjustment (UTU/GO-386). The March 22 decision also allowed for replies to be filed by April 7, 2004. A reply was timely filed on April 5, 2004. Subsequently, a petition by UTU/GO-386 for leave to late-file a reply was received on April 8, 2004, accompanied by the reply. The late-filed reply will be accepted to form a more complete record and because no party will be prejudiced by its inclusion.

BACKGROUND

In Greenville County Economic Development Corporation – Acquisition Exemption – South Carolina Central Railroad Company, Inc., Carolina Piedmont Division, STB Finance Docket No. 33752 (STB served June 3, 1999), the Greenville County Economic Development Corporation (GCEDC) acquired an 11.8-mile rail line between Greenville and Travelers Rest, SC. On June 30, 2003, in Greenville County Economic Development Corporation – Discontinuance of Service Exemption – in Greenville County, SC, STB Docket No. AB-490X (STB served July 18, 2003), GCEDC invoked the Board's class exemption procedures to obtain authorization to discontinue service over that line of railroad. In response, Lee Groome and Groome & Associates, Inc. (Groome), indicated that it has unsuccessfully sought service over the line, and that it was pursuing an action against GCEDC in South Carolina state court. Finding that Groome had raised sufficient concerns to make it inappropriate for GCEDC to use the expedited class exemption procedures, which are reserved for routine, noncontroversial matters, the Board dismissed the notice of exemption in a decision served on January 29, 2004. The Board stated that, to obtain discontinuance authority, GCEDC would have to proceed by filing a petition for an individual exemption under 49 U.S.C. 10502 or a full application under 49 U.S.C.

10903, either of which would permit the issues to be examined more fully on a more thoroughly developed record.[1]

The Board in its decision did not address the state court proceeding. Subsequently, in a letter dated March 11, 2004, Andrew J. White, Jr., counsel for GCEDC, raised questions about the state court's jurisdiction in light of the Federal preemption of state law embodied in 49 U.S.C. 10501(b). Among other things, Mr. White furnished the Board with a decision issued in the Greenville County Court of Common Pleas in Groome & Associates, Inc., and Lee K. Groome v. Greenville County Economic Development Corporation, Civil Case No. 01-CP-23-2351 (filed Feb. 13, 2004). In that decision, the court rejected GCEDC's argument that the court lacks jurisdiction to hear claims for damages resulting from failure to provide service (id. at 4); cited various provisions of the South Carolina Code as support for its authority to act (id.); found it "significant that the STB has made [its] ruling dismissing the carrier's action with full knowledge of the pending state court litigation," which, the court concluded, indicates that the Board "does not find the state court litigation to be offensive and apparently does not intend to preempt the jurisdiction of the state court in this matter" (id. at 5); and determined that it "is for a jury to determine whether the defendant had fully complied with [its] common carrier obligations to provide rail service on the contested line." Id. The Board treated Mr. White's letter as a petition for declaratory order and instituted this proceeding.

DISCUSSION AND CONCLUSIONS

In this decision, we will not address the merits of the underlying case; rather we will only address whether the preemption provisions of 49 U.S.C. 10501(b)(2) preclude a state court from hearing a lawsuit alleging that a railroad has failed to carry out its common carrier obligation to provide service.

As stated in the March 22 decision, under 49 U.S.C. 10501(b), the Board has exclusive jurisdiction over "transportation by rail carriers," and the remedies provided in the Interstate Commerce Act (IC Act), which the Board administers, "preempt [other] remedies provided under Federal or State law." Several courts have interpreted this provision and have found it is extremely broad. See, e.g., CSX Transp. v. Georgia PSC, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996); Friberg v. Kan. City S. Ry., 267 F.3d 439, 443 (5th Cir. 2001). In the March 22 decision, the Board cited Pejepscot Indus. Park v. Maine Cent. R. Co., 215 F.3d 195 (1st Cir. 2000) (Pejepscot), which addressed the preemptive effect of section 10501(b) on state court actions in cases involving the common carrier obligation. In Pejepscot, the court stated that "Congress intended only to preempt state law and remedies," but did not intend to oust concurrent Federal district court jurisdiction over common carrier obligation claims under the IC Act. Id. at 204-05.

[1] On June 24, 2005, GCEDC filed in STB Docket No. AB-490 (Sub-No. 1X) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon the line.

UTU/GO-386, the only commenter opposing the exclusive Federal jurisdiction, argues that state courts are not precluded from hearing such lawsuits. However, the cases it cites do not support this contention. Rather, those cases either support a finding of exclusive Federal jurisdiction or were decided prior to the enactment of the ICC Termination Act (ICCTA), which divested the state courts of subject matter jurisdiction over transportation by rail carriers as part of the interstate rail network. See City of Auburn v. United States, 154 F.3d 1025 (9th Cir. 1998), cert. denied, 527 U.S. 1022 (1999); Burlington Northern R.R. v. Page Grain Co., 545 N.W.2d 749 (Neb. 1996). The House report on ICCTA states, "[t]he bill is intended to standardize all economic regulation (and deregulation) of rail transportation under Federal law, without the optional delegation of administrative authority to State agencies to enforce Federal standards . . ." H.R. Rep. No. 104-311, at 95-96 (1995) *reprinted in* 1995 U.S.C.C.A.N. 793, 807-08. The House report goes on to state that:

> [a]lthough States retain the police powers reserved by the Constitution, the Federal scheme of economic regulation and deregulation is intended to address and encompass *all* such regulation and to be completely exclusive. Any other construction would undermine the uniformity of the Federal . . . scheme of minimal regulation for this intrinsically interstate form of transportation. Id.

Accordingly, as the court in Pejepscot found, 49 U.S.C. 10501(b)(2) preempts state laws and remedies with regard to a railroad failing to carry out its common carrier obligation and, while federal district courts and the Board have concurrent jurisdiction under the statute, the Board has primary jurisdiction to determine whether a railroad's common carrier obligation has been met.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The late-filed comments of UTU-GO-386 are accepted for filing.

2. This proceeding is discontinued.

3. This decision is effective on the date of service.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary